

relating to an alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

§ 1980.103 Filing of discrimination complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by a company or company representative in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) *Nature of filing.* No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: <http://www.osha.gov>.

(d) *Time for filing.* Within 90 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery or other means, the complaint is filed upon receipt.

§ 1980.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person (or named persons) of the filing of the complaint, of the allegations contained

in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary also will notify the named person of its right under paragraphs (b) and (c) of this section and paragraph (e) of § 1980.110. A copy of the notice to the named person will also be provided to the Securities and Exchange Commission.

(b) A complaint of alleged violation shall be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a *prima facie* showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.